

SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

ENFORCEMENT COMMITTEE MEETING
PARTIAL TRANSCRIPT - ITEM 5

BAY AREA METRO CENTER
YERBA BUENA ROOM, FIRST FLOOR
375 BEALE STREET
SAN FRANCISCO, CALIFORNIA

THURSDAY, FEBRUARY 21, 2019
10:05 A.M.

Reported by: Ramona Cota

A P P E A R A N C E SEnforcement Committee

Marie Gilmore, Acting Chair

Jill Techel

John Vasquez

Counsel to the Committee

Shari Posner, Deputy Attorney General
Office of the Attorney General

BCDC Staff

Karen Donovan, Staff Counsel

Adrienne Klein, Chief of Enforcement

Marc Zeppetello, Chief Counsel

Respondent

No appearance

Public Speakers

Meredyth Merrow
San Francisco Baykeeper

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P R O C E E D I N G S

10:05 a.m.

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3 COMMITTEE CHAIR GILMORE: So item number 5, which is a
4 Public Hearing and Vote on a Recommended Enforcement
5 Decision and Proposed Cease and Desist Order regarding the
6 Salt River Construction Corporation.

7 MS. DONOVAN: Good morning, Commissioner Gilmore and
8 Members of the Committee, I am here this morning to present
9 to you a proposed Cease and Desist Order and Civil Penalty
10 Order for Salt River Construction Corporation, a dredging
11 entity that was issued a -- that was conducting operations
12 for a permittee of BCDC.

13 There are three violations that are covered by this
14 Order and they occurred in two distinct places. The first
15 violation was some unauthorized movement of a barge using
16 the excavator bucket essentially to propel a barge along the
17 Bay floor up in Richardson's Bay. The other two violations
18 are related to the mooring of vessels in Belmont Slough.
19 For an extended period of time two different Salt River
20 Construction Corporation barges remained in Belmont Slough
21 after the cessation of their dredging operations that were
22 conducted for Foster City.

23 The first violation is described in detail in the
24 Violation Report and in the administrative record you can
25 see the videos of this, I've included a photograph.

1 Baykeeper filmed and then reported to BCDC a barge that
2 was propelling itself up in Richardson's Bay using the
3 excavator bucket, essentially lowering it to the Bay floor
4 and dragging the barge along. They subsequently sent the
5 videos and photographs via email to BCDC staff. BCDC staff
6 identified Salt River Construction Corporation equipment in
7 the videos and that is the basis of the first violation.

8 The second two violations are for two barges that
9 remained in Belmont Slough for an extended period of time
10 after Salt River Construction Corporation finished a
11 dredging operation that they were conducting for Foster
12 City.

13 There was originally a fourth violation related to the
14 dredging operations. Essentially there was apparently some
15 material beyond what was authorized that was dredged as part
16 of the dredging operation and some discrepancies in the logs
17 that were submitted.

18 That violation is no longer at issue. In discussing it
19 with both Foster City and Salt River, BCDC determined not to
20 pursue that. Salt River has argued that those operations
21 were conducted with the authorization and at the direction
22 of Foster City, Foster City maintains otherwise; and in the
23 course of our conversations it was determined that that
24 violation would not be pursued.

25 We also subsequently dropped the first two days that

1 were originally set forth in the Violation Report with
2 regard to the storage of the barges because Foster City
3 sought and received authorization from the resource agencies
4 for a two-day continuance in the dredging operations. This
5 is as the operation slowed down for various reasons. It was
6 very specific in that authorization, however, because they
7 were hitting the window wherein certain species are
8 protected and the dredging operations can damage them, that
9 their extension only ran through February 2nd, so we have
10 started the violations for the unauthorized mooring
11 beginning on February 3rd.

12 This came to our attention via an email, it was
13 originally brought to the attention of the Coast Guard and
14 the Corps of Engineers.

15 The photograph and this map that I have submitted were
16 provided to us by a consultant who was working for Foster
17 City.

18 Through a series of communications it was confirmed
19 that Salt River Construction Corporation barges had remained
20 in the slough for an extended period of time beyond 50 days
21 after the dredging operation was discontinued. And we have
22 photographs and these maps that were submitted by
23 consultants, both -- a consultant for the landowner took
24 this one and there were barges offshore of this landowner's
25 property and then consultants for Foster City took the other

1 ones.

2 So just to summarize:

3 What is included in the Cease and Desist and Civil
4 Penalty Order is a prohibition on propelling with an
5 excavator bucket anywhere in BCDC's jurisdiction except as
6 described in the CDO. This is important because Salt River
7 has engaged in these activities in the past and we thought
8 it was important to have a CDO issued that would be anywhere
9 within the Bay and ensuring that they didn't engage in these
10 activities.

11 The CDO also prohibits the mooring and storage of
12 equipment in unauthorized locations. These are also as
13 described in the staff report. Issues that we have had with
14 Salt River in the past in other locations in the Bay as well
15 as in Belmont Slough.

16 The Order also requires the use of a grizzly. This is
17 an apparatus that helps to screen trash out of the dredged
18 material, particularly when it is being disposed of at an
19 authorized disposal site.

20 The total penalty is \$28,500. That's \$2,000 for the
21 single day in Richardson's Bay that we have evidence of them
22 conducting the -- essentially the mobilization of the barge
23 using the excavator bucket, and then \$13,250 for each of the
24 two barges that were moored without authorization in Belmont
25 Slough.

1 And that concludes my presentation and I am happy to
2 answer any questions.

3 COMMITTEE MEMBER VASQUEZ: The number on the slide was
4 incorrect. You had \$13,500 for the second barge. I'm
5 sorry.

6 MS. DONOVAN: Oh, I'm sorry, yes, that is an incorrect
7 number for Barge #2.

8 COMMITTEE CHAIR GILMORE: Okay, I just have one
9 question. So Salt River has engaged in these types of
10 activities in the past and they were in the past subject to
11 a Cease and Desist Order from BCDC?

12 MS. DONOVAN: There was an Order issued for one of the
13 violations. We have opened numerous enforcement actions
14 against them and one of them did result in a CDO. That was
15 specific to the location and the operations that they had
16 engaged in and that was up in the Tiburon area, I believe,
17 near Larkspur. So that is why -- I assume your question is
18 why this is not alleging a violation of that CDO, in other
19 words, a violation of the terms of that CDO. And that is
20 because that one was specific to the location and what they
21 engaged in at that location and it was different from what's
22 in these two.

23 We have opened enforcement actions against them in
24 the past, though, both for unauthorized storage of
25 equipment, I believe there's at least three, and then for

1 propelling barges using the excavator bucket. But neither
2 of those resulted in an issued CDO. The one you're
3 referring to was an Executive Director-issued order.

4 COMMITTEE CHAIR GILMORE: So I guess my point is --
5 thank you for that. But I guess my point is that they have
6 been the subject of enforcement activity of some kind from
7 BCDC for these actions. Has there been any communication in
8 the past from BCDC as to the proper methods of propelling
9 the barge and how to store and where to store their
10 equipment and barges? So in other words basically what I am
11 asking is, they have been through this before and should
12 they know the proper procedures?

13 MS. DONOVAN: Yes, the answer to that is, yes. There
14 have been conversations with them related to each
15 enforcement action and they have been instructed as to what
16 BCDC would consider an authorized activity. Each of these
17 dredging operations is also undertaken pursuant to a permit
18 where there is a dredge operations plan and these activities
19 that they have engaged in in the past are outside of what is
20 described as proper dredging in the dredge operations plans.

21 COMMITTEE CHAIR GILMORE: Okay. Any questions?

22 COMMITTEE MEMBER TECHEL: Not at this time.

23 COMMITTEE CHAIR GILMORE: Okay, thank you.

24 MS. DONOVAN: And just to note, we had reserved time
25 but Salt River is not here, to my knowledge. We have had

1 extensive communications with them including seeing if they
2 would stipulate to the CDO and in those we gave them the
3 location of this meeting and the time. I reached out to
4 them yesterday too to remind them that the Enforcement
5 Committee would be holding a meeting at this location and
6 this time; I don't believe that they are here. We do have
7 one speaker who I think wants to speak on this item but to
8 my knowledge Salt River is not here to present on this item.

9 COMMITTEE CHAIR GILMORE: Okay, thank you.

10 Then I will call the public speaker and that's Meredyth
11 Merrow.

12 MS. MERROW: Good morning. My name is Meredyth Merrow
13 on behalf of San Francisco Baykeeper. I am here to express
14 support for the Proposed Cease and Desist and Civil Penalty
15 Order No. 2019.01 against Salt River Construction
16 Corporation.

17 On behalf of Baykeeper I would like to thank BCDC for
18 your enforcement work. As you know, Baykeeper regularly
19 patrols the Bay for pollution and on November 25th, 2017 our
20 patrol boat witnessed a Salt River barge being propelled by
21 its excavator bucket in Richardson's Bay. We appreciate
22 BCDC's response and follow-up to stop this activity from
23 recurring.

24 We are grateful to BCDC for its work to protect and
25 enhance the San Francisco Bay and its dedication to

1 promoting responsible use of these waters.

2 Baykeeper is committed to ensuring the health and
3 welfare of the San Francisco Bay and we appreciate BCDC's
4 work in supporting this mission.

5 We full support the adoption of the recommended Cease
6 and Desist and Civil Penalty Order against Salt River and we
7 hope that BCDC continues to take strong enforcement action
8 against these blatant violators. Thank you for your time.

9 COMMITTEE CHAIR GILMORE: Thank you.

10 That was my last speaker slip on this item. Is there
11 anybody else present who would like to speak on this item?

12 Seeing nobody I am going to entertain a motion to close
13 the public hearing.

14 COMMITTEE MEMBER VASQUEZ: So moved.

15 COMMITTEE MEMBER TECHEL: Second.

16 COMMITTEE CHAIR GILMORE: All in favor?

17 (Ayes.)

18 COMMITTEE CHAIR GILMORE: Okay. Commission discussion
19 or we could entertain a motion.

20 COMMITTEE MEMBER TECHEL: I was kind of looking forward
21 to hearing the rest of the story. There certainly was a lot
22 of materials that they sent to us, a lot of emails, a lot of
23 talking about permitting. I didn't quite understand how
24 complex dredging was and a lot of people are watching it to
25 be sure you do it right.

1 I also appreciated on the original Exhibit B we got,
2 which was the fines, there were some that were reduced or
3 removed after you had conversations with others. Appreciate
4 an agency that says, yes, we looked at it this way, you made
5 a good case for that, and so you reduced the two fines.

6 I feel like staff did their work. This happened, we do
7 need to protect the Bay, so I will make a motion to move
8 forward with the recommended action.

9 COMMITTEE MEMBER VASQUEZ: I'll second that.

10 COMMITTEE CHAIR GILMORE: Okay, we have a motion and a
11 second. Do we have to do this by voice vote?

12 MR. ZEPPETELLO: I think you should do a roll call.

13 COMMITTEE CHAIR GILMORE: Okay, roll call, please.

14 MS. KLEIN: Member Techel?

15 COMMITTEE MEMBER TECHEL: Aye.

16 MS. KLEIN: Member Vasquez?

17 COMMITTEE MEMBER VASQUEZ: Aye.

18 MS. KLEIN: Chair Gilmore?

19 COMMITTEE CHAIR GILMORE: Yes.

20 Thank you.

21 (Thereupon, the Enforcement Committee
22 meeting continued to Item 6.)

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CERTIFICATE OF REPORTER

I, Ramona Cota, an Electronic Reporter and Transcriber,
do hereby certify that I am a disinterested person herein;
that I recorded the foregoing San Francisco Bay Conservation
and Development Commission, Enforcement Committee Meeting
and thereafter transcribed it.

I further certify that I am not of counsel or attorney
for any of the parties to said meeting, or in any way
interested in the outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this
3rd day of March, 2019.



RAMONA COTA, CERT**478